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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/828,226	04/09/2001	Kevin A. McIntyre	3598-2	5634

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EXAMINER
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FELTEN, DANIEL S

ART UNIT	PAPER NUMBER
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3624

DATE MAILED: 04/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/828,226	MCINTYRE, KEVIN A.	
	Examiner	Art Unit	
	Daniel S Felten	3624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on 07 December 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-7 and 9-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-7 and 9-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

1. Receipt of the Amendment filed December 07, 2004 amending claims 1, 4, 5, 19 and 20 and adding claims 26-30 is acknowledged. Claims 1, 2, 4-7, 9-21 and 25-30 are pending in the application and are presented to be examined based upon their merits.

### ***Response to Arguments***

2. Applicant's arguments, see Amendment, filed December 07, 2004, with respect to the rejection(s) of claim(s) 1, 2, 4-7, 9-21 and 25 under 35 U.S.C. § 112, second paragraph have been fully considered and are persuasive. Therefore, the 35 U.S.C. § 112, second paragraph rejection(s) has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of 35 U.S.C § 101 and new prior art cited below.

### ***Claim Rejections - 35 USC § 101***

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

The claimed invention is directed to non-statutory subject matter. Particularly, claims 1, 2, 4-7, 9-18 and 25 do not recite technology within the body of the claim(s). The mere recitation of technology (i.e., a computer or global network) in the preamble, without any further tie to technology in the body of the claim that would provide technology in a non-trivial manner to the claimed subject matter does not breath "life and meaning" into the claim and thus, does not

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constitute a limitation. [see *Kropa v. Robie*, 88 USPQ 478 (CCPA 1951)]. Since the limitation .  
“a global network” in the preamble does not constitute a limitation and the body of the claim  
provides for no technology, the claimed invention lacks technology.

Moreover, in further analysis of the claim(s), the invention in the body of the claim(s)  
manipulates an abstract idea and/or human-performed processes and does not provide technology  
producing a “useful, concrete and tangible result” [see *Ex Parte Bowman*, 61 USPQ2d 1665,  
1671 (BD Pat. App & Inter 2001) (Unpub)]\*. Also note MPEP 2106 IV (b).

\*Even though *Bowman* is not precedential, it is cited for its analysis of what denotes non-statutory subject matter.

*Claim Rejections - 35 USC § 103*

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 2, 4-7, 9-21 and 25-30 and are rejected under 35 U.S.C. 103(a) as being unpatentable over Sundaresan et al (US 6,868,400) in view of Micali (US 5,615

*As per claims 1, 2, 9-14, 17 and 25*, Sundaresan et al discloses receiving a lower limit price for a product from a seller, the buyer being unaware of the seller's lower limit price (see figs. 1 & 2, col. 6, ll. 3-29);

receiving an upper limit bid for the product from the buyer, the seller being unaware of the buyer's upper limit bid (see figs. 1 & 2, Abstract; col. 6, ll. 3-29);

comparing the seller lower limit price and the buyer upper limit bid (see figs. 1 & 2, Abstract; col. 6, ll. 3-29);

if an overlap region exists between the seller lower limit price and the buyer upper limit bid, setting a price point for the product with the overlap region that is based on the lower limit price and the upper limit bid (see figs. 1 & 2, Abstract; col. 6, ll. 3-29).

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Sundaresan teaches that a spread maximizing net value is divided among the buyer, seller and the trading exchange based upon the true value of the buyer and the seller (see col. 6, ll. 15+), but fails to disclose if an overlap region does not exist between the seller and the lower limit price and the buyer upper limit bid, further processing the transaction without seller or buyer input (*or blind*) by setting a theoretical price point between the lower limit price and the upper limit bid.

Michali teaches a method of electronic communications between a first party and a second party enabling further processing of an electronic transaction without seller or buyer input (see “blind negotiations” and “split the middle”, col. 2, ll. 7-48). An artisan of ordinary skill at the time of the invention of Sundaresan would have recognized the concept “blind negotiations” as a commonly used technique within the negotiations and/or trading processes where anonymity is desired to complete a transaction. Thus an artisan would have employed blind negotiations to provide a measure of security between parties when aligning closest attribute ranges desired by the buyer (or buyers) with attribute ranges that can be provided by the seller (or sellers).

Moreover, it would have been obvious for the trading manager of the Sundaresan invention (in general) to set a price point (or points) between the spread of the buyer’s true value and the sellers true value or to “split the middle” between the true value of the seller and the true value of the buyer because one of ordinary skill in the art would recognize the fact that the use of such a concept by the trading manager would benefit the buyer and the seller. Thus to employ such a modification would provide equal and mutual satisfaction from both parties for a

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particular good or service being be an obvious expedient of Sandaresan's invention as well being within the ordinary skill in the art.

*As per claim 26*, if the over lap region does not exist, between the seller lower limit and buyer upper limit further processing the transaction according to predefined parameters (see figs. 1 & 2, Abstract; col. 6, ll. 3-29; and col. 6, ll. 31+);

*As per claims 4-7*, (see figs. 1 & 2, Abstract; col. 6, ll. 3-29; and col. 6, ll. 31+);

*As per claim 15*, additionally receiving an expiration relating to the product and by receiving a lower limit price range from the seller that varies with time to the expiration (see figs. 1 & 2, Abstract; col. 6, ll. 3-29; and col. 6, ll. 31+);

*As per claim 16*, is practiced by additionally receiving and expiration relating to the upper limitation bid and by receiving an upper limit bid and by receiving an upper limit bid range from the buyer that varies with time to the expiration (see figs. 1 & 2, Abstract; col. 6, ll. 3-29; and col. 6, ll. 31+);

*As per claim 18*, compiling a database of information relating to sellers, buyers, products and price points (

*As per claims 19-21*, (see figs. 1 & 2, Abstract; col. 9, ll. 26+);

*As per claims 27-30*, comprising compiling a database of information relating to sellers, buyers, products and price points (see fig 4. col. 8, ll. 26-46; and col. 9, ll. 25+),

*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel S Felten whose telephone number (571) 272-6742. The examiner can normally be reached on Flex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on (571) 272-6747.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Daniel S Felten  
Examiner  
Art Unit 3624



DSF  
April 13, 2005

**VINCENT MILLIN**  
**SUPERVISORY PATENT EXAMINER**  
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